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SUPREME COURT, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

No. 71-6533

ROY D. PLOTT,
Petitioner,

v.

STATE OF TENNESSEE,
Respondent.

BRIEF

In Opposition to Petition for a Writ of Certiorari to the Court of Criminal Appeals of Tennessee

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OPINION BELOW

The unreported opinion of the Court of Criminal Appeals of Tennessee was entered and filed on 10 December 1971 and, since a correct copy of said opinion is not attached to the petition in this case, a certified copy of the same is attached hereto as Appendix I. A certified copy of the order of the Tennessee Supreme Court denying petitioner a writ of certiorari entered on 6 March 1972, also unreported is attached as Appendix II.

JURISDICTION

The jurisdictional requisites are adequately set forth in the petition.

QUESTIONS PRESENTED

The respondent is not dissatisfied with the presentation of the questions by the petitioner, except to note that none of the issues raised presents a federal question of substance.

STATEMENT OF THE CASE

The petitioner, Roy Douglas Plott, was indicted by the Grand Jury of Hamilton County, Tennessee upon a charge of murder in the first degree. The case came on for trial on 7 April 1971 before the Honorable Campbell Carden, Judge, and a jury, in the Criminal Court of Hamilton County, Tennessee, at Chattanooga, Tennessee, upon the petitioner's not guilty plea. Thereafter, on 8 April 1971, upon the conclusion of all the proof, the argument of counsel, and the charge by the judge, the jury found the petitioner guilty of murder in the second degree and sentenced him to confinement in the Tennessee State Penitentiary for a period of fifteen (15) years. The Trial Judge entered the judgment in accordance with the jury's verdict and announced a sentence of not less than ten (10) nor more than fifteen (15) years in the State Penitentiary. Upon the overruling of petitioner's motion for a new trial on 7 June 1971, the petitioner prayed for, was granted, and duly perfected an appeal-in-error to the Court of Criminal Appeals of Tennessee assigning the same alleged errors as herein presented. The Court of Criminal Appeals of Tennessee in an unreported opinion filed on 10 December 1971, affirmed the judgment of the Trial Court. On 6 March 1972 the Supreme Court of Tennessee denied the petitioner's petition for a writ of certiorari.

ARGUMENT

Respondent submits that only one federal question is peripherally raised in the petition. That is his allusion to the denial of his right to be informed of the charges against him guaranteed by the Sixth Amendment to the United States Constitution.

After the indictment had been read, the plea of not guilty entered, and the jurors sworn, the Trial Judge required the defendant to present his opening statement prior to that of the State, if he desired to present a statement at all. The defendant now alleges, *inter alia,* that this requirement denied him the right to be informed of the nature and cause of the accusation against him.

No attack was made upon the indictment which fully informed the defendant of the charges against him and allowed him to prepare his defense.

The indictment herein fully complied with the constitutional provision which requires that the petitioner be informed of the nature and cause of the accusation against him so as to be enabled to prepare his defense. (See **Hallman v. U.S.**, 208 F.2d 825, 93 U.S. App. D.C. 39.)

The petitioner has not alleged that he was denied the right of confrontation nor that he was compelled to testify. No allegation was made that he was in any way surprised or harmed by the State's succeeding opening statement.

Tennessee Code Annotated § 20-1329 states:

> "In all actions of a civil or criminal nature tried before a jury, all parties thereto, shall have the right prior to the presentation of any evidence in the case to make an opening statement to the court and jury